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12 JON BENGTSON, and DEBASHIS BAGCHI

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

## SAN FRANCISCO DIVISION

22 ANUBHAV SINGH OBEROI, Case No. 5:20-cv-00753-EJD  
23 Plaintiff,  
24 vs.  
25 AIRWIRE TECHNOLOGIES, Date: July 7, 2022  
26 Defendant. Time: 10:00 a.m.  
Place: Courtroom 4  
Judge: Honorable Edward J. Davila  
27  
Complaint Filed: January 31, 2020

**JOINT CASE MANAGEMENT STATEMENT**

## JOINT CASE MANAGEMENT STATEMENT

CASE NO. 5:20-CV-00753-EJD

1 Plaintiff Anubhav Singh Oberoi (“Plaintiff” or “Mr. Oberoi”) and Defendant AirWire  
2 Technologies (“Defendant,” “AirWire” or “the Company”) (collectively “the Parties”) hereby  
3 submit this Joint Case Management Statement pursuant to the Court’s May 12, 2022 Order (Dkt.  
4 No. 44).

5 **I. JURISDICTION AND SERVICE, PROCEDURAL HISTORY**

6 On January 31, 2020, Plaintiff filed the Complaint against Defendant and two individual  
7 defendants that have since been dismissed. The Complaint alleged causes of action for violations  
8 of the federal Fair Labor Standards Act (“FLSA) and California’s Labor Code and Business and  
9 Professions Code.

10 This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(a) because the  
11 parties are citizens of different states. The amount in controversy exceeds \$75,000 exclusive of  
12 interest and costs.

13 This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because  
14 Plaintiff alleges claims under the FLSA, a law of the United States.

15 Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial  
16 part of the events giving rise to the claims occurred in this district. Plaintiff was employed within  
17 this district.

18 Counsel for Defendant accepted service of the Complaint and Summons on behalf of  
19 Defendant on February 12, 2020. Defendant filed its Answer to Plaintiff’s Complaint on  
20 March 31, 2020.

21 The parties agree that jurisdiction and venue are proper. Defendant has been served.

22 This case has largely been stayed and/or administratively closed since November 9, 2020.  
23 Initially, the case was stayed on account of the Parties’ conditional settlement (whose conditions  
24 were never completed) and subsequently by Defendant’s bankruptcy filing. (See Dkt. Nos. 31,  
25 33, 34).

26 On April 28, 2021, Defendant notified the Court that it had filed for bankruptcy in the  
27 United States Bankruptcy Court, District of Nevada, which stayed this case as to Defendant  
28 AirWire Technologies. (Dkt. No. 34).

1 Plaintiff and the two individual defendants, Jon Bengtson and Bebassis Bagchi, reached a  
2 resolution. On July 19, 2021, the Parties stipulated to the dismissal of the individual defendants,  
3 with prejudice, leaving AirWire as the sole remaining defendant. (Dkt. No. 40).

4 On August 4, 2021, the Court administratively closed this case, pending the resolution of  
5 Defendant's bankruptcy proceedings. (Dkt. No. 41).

6 On February 3, 2022, the Bankruptcy Court for the District of Nevada entered an order  
7 dismissing Defendant's bankruptcy case without affecting the status of any adversary proceeding  
8 pending against Defendant.

9 **II. STATEMENT OF FACTS**

10 **Plaintiff's Statement**

11 A.S. Oberoi joined AirWire Technologies as its Vice President of World-Wide Business  
12 Development in February of 2016. Starting in July of 2016, the company stopped paying  
13 Mr. Oberoi his salary, citing financial struggles. Based on representations by the company's  
14 CEO, Debasish Bagchi, and Board Chairman and CFO, Jon Bengtson, that imminent influxes of  
15 capital would allow AirWire to pay him back soon, Mr. Oberoi continued working for the  
16 company without receiving his salary. In order to survive, Mr. Oberoi depleted his savings and  
17 drained his 401k accounts.

18 While the company sporadically made small payments to him, it continued to employ him  
19 without paying him his salary for almost two years. By March of 2018, the company's own  
20 payroll correspondences confirmed that Mr. Oberoi was owed almost \$250,000 in accrued back  
21 pay. This amount has grown considerably since then on account of prejudgment interest,  
22 attorney's fees, and the damages associated with Plaintiff's statutory claims.

23 In March of 2018, Mr. Bengtson circulated to Mr. Oberoi and his colleagues a  
24 memorandum that purported to retroactively notify them that the company had "ceased to accrue  
25 salary" as of December 31, 2017, despite the fact that Mr. Oberoi had continued to work for the  
26 company through the March 2018 date the memorandum was circulated.

27 ///

28 ///

1 Since March of 2018, AirWire has made almost no meaningful headway in paying off the  
2 hundreds of thousands of dollars it owes Mr. Oberoi in back wages, opting instead to use its  
3 available funds to pay business investments it deems to be a higher priority.

4 **Defendant's Statement**

5 AirWire is a small, "high-tech," Nevada start-up company that is currently designing in  
6 order to deploy an artificial intelligence based virtual assistant for use in automobiles. The  
7 product will be an "app" named Jarvis. The distinction between Jarvis and other common virtual  
8 assistants is that Jarvis is driven by cognitive artificial intelligence using IBM's Watson as its  
9 platform. Accordingly, Jarvis is intuitive. It remembers the operator's behavior in order to  
10 predict the current needs and desires of that person. The potential applications for this  
11 technology have attracted investments in the Company of over \$1.5 million during Mr. Oberoi's  
12 employment. These funds were largely used to cover operating and development costs.  
13 Unfortunately, the Company was not, during the relevant time period, able to bring salable  
14 products or services to market. AirWire's revenue was \$2,100 in 2016, \$85,500 in 2017 and \$0  
15 in 2018.

16 Mr. Oberoi received a letter form offer of employment from AirWire on February 9,  
17 2016, for the position as the Vice-President of World-Wide Business Development. Mr. Oberoi  
18 executed and returned the offer letter that same day. The position provided an annual salary of  
19 \$175,000 and other benefits. One of the most potentially lucrative benefits was the Company  
20 Stock Option Plan. This plan allowed executives, like Mr. Oberoi, the option to purchase  
21 500,000 shares of the Company's common stock at \$1.00 per share. The stock options vest over  
22 five years, at the rate of approximately 20% per year. Vesting ceases upon termination of  
23 employment, giving, however, participating employees the option of purchasing the shares that  
24 vested, to-date, within 30 days of leaving the Company, or lose the option to acquire the vested  
25 shares, altogether. This provision was intended to incentivize employees to remain with the  
26 Company.

27 Plaintiff's primary duty was to develop customers (sales) for the Company's products  
28 and/or services with businesses operating in South Asia. Plaintiff traveled to the region on

1 Company business. Further, he attended international trade shows with other Company  
2 executives where representatives from companies operating in South Asia were in attendance.  
3 When not traveling abroad, Plaintiff was in communications with his sales prospects in South  
4 Asia by telephone and email. These communications were conducted incidental to and in  
5 conjunction with Plaintiff's efforts to sell goods and services to businesses operating in South  
6 Asia. Conversely, almost none of his time was spent with customers or suppliers in the United  
7 States as was entirely consistent with the employer's expectations.

8 In addition to Plaintiff's efforts to sell AirWire's goods and/or services, he was charged  
9 with attempting to locate investors, most of which were located on the Indian subcontinent.  
10 Plaintiff's sales and financing efforts were performed in an office, his home office, and were part  
11 of the management and general business operations of his employer. Moreover, Plaintiff's  
12 duties required the exercise discretion and independent judgment in these matters of significance  
13 to AirWire.

14 Plaintiff regularly received bi-monthly payments of salary from March through June of  
15 2016, for a total gross income of \$68,939.43. In July of that year, the Company encountered a  
16 critical shortage of capital which caused the Company to cease the payment of salaries to all of  
17 its executives and officers. Like other corporate officers, Mr. Oberoi was told that he had the  
18 option of leaving the Company and seeking employment elsewhere, in which case, Mr. Oberoi  
19 had to purchase his vested shares of stock in the Company within 30 days of separation from  
20 employment to avoid losing the option. Or Mr. Oberoi could choose to stay with the Company,  
21 without regular compensation, but while continuing to accrue vested shares in the Company  
22 pursuant to the Company's stock option plan. Like other corporate officers, Mr. Oberoi was told  
23 that if he stayed, the Company would advance him funds, consistent with the cash flow needs of  
24 the Company and Mr. Oberoi's need for funds to survive, until the Company raised adequate  
25 capital or became a going concern and able to pay Mr. Oberoi his back wages, which payment  
26 would be deferred until one or both of these conditions had been met. This was also the  
27 Company's attempt to keep the team of executives together to further the Company's quest to  
28 become a profitable, going concern.

1        Faced with this Hobson's choice, Mr. Oberoi took the stock option path and elected to  
2 remain at work with the Company, accept advances and agree to defer payment on his salary. In  
3 fact, he received cash advances from July 2016, on a reasonably regular basis. These advances  
4 continued even after he stopped performing and essentially quit the Company in March of 2018.  
5 For the period of October 2016 through February 2018, Mr. Oberoi received 19 advances totaling  
6 \$57,264.00.

7        Then, after Mr. Oberoi left the Company, these payments continued, though he was doing  
8 no work. From April 2018, through September 2018, Mr. Oberoi received seven more  
9 installments amounting to \$22,000. Thus, for the period of October 2016 through September  
10 2018, Mr. Oberoi was paid advances amounting to \$79,264.

11       The advances picked up again in January 2019, through August 2019. During this period,  
12 the Company made nine advances of \$3,000 each, totaling another \$27,000. Payments ceased as  
13 of August 2019. Over the period of July 2016 through August 2019, Mr. Oberoi, therefore,  
14 received advances of \$106,243, for a period of 38 months. These cash advances are to be repaid,  
15 as an eventual offset against the wages now owed, but not yet due.

16       During the time Mr. Oberoi worked for the Company, a period of 24 months from  
17 February of 2016 through February 2018, when he just stopped performing, he was paid in salary  
18 or advances the sum of \$126,203.43, that is \$68,939.43 at \$14,583 per month, plus \$57,264 in  
19 advances. This amortizes out at the rate of \$5,258.48 per month or \$63,101.72 per year. Under  
20 the FLSA, an exempt administrative employee need only earn \$23,660 (\$455/week times  
21 52 weeks) in one year. Mr. Oberoi also received payments virtually every month from February  
22 2016 through February 2018, when he walked away from the Company.

23       Should this matter be considered a breach of contract action, Mr. Oberoi would have been  
24 paid a total of \$350,000 and has received \$175,213.43. Thus, recoverable damages in connection  
25 with a breach of contract claim would be limited to \$174,786.57.

26 **III. LEGAL ISSUES**

27       The Parties agree that this case does not appear to raise novel or unresolved issues of law  
28 and will likely be resolved by the determination of disputed facts.

## Plaintiff's Position

Plaintiff asserts that the key legal issues currently include the following: whether and in what amount Plaintiff is owed unpaid wages and damages flowing therefrom such as liquidated damages, interest, waiting time penalties and attorney's fees; and whether Plaintiff was misclassified either on account of Defendants' failure to meet the salary basis test associated with any exemptions or on account of job duties.

## Defendant's Position

The defendants assert the following legal issues:

(1) Whether this is, in reality, an alleged breach of contract or oral contract or *quantum meruit* case, to which the current FLSA and California Labor Code claims do not apply;

(2) Whether Mr. Oberoi was, at all relevant times, exempt under the FLSA and California Labor code as a result of his high salary, sales and administrative functions;

(3) Whether Mr. Oberoi was, at all relevant times, exempt under the FLSA and California Labor code as an outside salesperson.

(4) Whether the company is an employer subject to the FLSA and California Labor Code as the result of its minimal income for the relevant time period;

(5) Whether Plaintiff was in fact paid sufficient wages under the FLSA and California Labor Code;

(6) If Plaintiff is determined to be a covered employee under the FLSA and/or California Labor Code, whether the Company is allowed to deduct the time spent on international travel and working with international contacts from the amount of wages owed;

(7) Whether Defendant is allowed an offset in the approximate amount of \$170,000;

(8) Whether Plaintiff modified the terms of his employment contract through his consent to non-payment;

(9) Whether Plaintiff's employment contract was modified to add a condition precedent;

(10) If Plaintiff was at any relevant time not properly classified as exempt under the FLSA and/or California Labor Code, whether Plaintiff worked enough hours in a workweek workday to be entitled to overtime;

(11) Whether Plaintiff is entitled to liquidated damages if the Company reasonably believed he was a highly salaried, exempt employee of the Company;

(12) Whether Plaintiff is a highly salaried Vice President of the Company, and therefore not entitled to the protection of the FLSA and the California Labor Code.

5 (13) Whether Defendant's conduct was not willful, such that the appropriate statute of  
6 limitations for Plaintiff's FLSA claims is two years instead of three;

(14) Whether Plaintiff is not entitled to waiting time penalties pursuant to California Labor Code section 203 because any nonpayment of wages due was not willful as required.

## IV. MOTIONS

The Parties have yet to file any motions. The Parties may file motions for summary judgment or adjudication, and motions to compel discovery, as necessary, if good faith meet and confer is unable to resolve any discovery issues that arise.

## **V. AMENDMENT OF PLEADINGS**

Should this matter not resolve, AirWire anticipates amending the pleadings in order to add affirmative defenses specific to the FLSA. The Parties propose October 28, 2022 as the deadline to amend the pleadings.

## VI. EVIDENCE PRESERVATION

The Parties have reviewed the ESI Guidelines, have met and conferred regarding their obligations to preserve evidence, and have taken the steps necessary to preserve the information in their possession.

## VII. DISCLOSURES

The Parties do not believe that the Court's Pilot Program for Initial Discovery Protocols applies to this case. The Parties exchanged initial disclosures pursuant to FRCP 26(a) on July 10, 2020.

## VIII. DISCOVERY

The Parties have exchanged initial disclosures pursuant to FRCP 26(a) and Plaintiff served an initial round of written discovery prior to the case being stayed. The Parties do not anticipate that additional discovery beyond that provided by the Federal Rules will be necessary.

1 The Parties agree that service by email for all discovery is mutually agreeable, except where file  
2 size or other issues prevent it. The Parties have not considered a stipulated e-discovery order but  
3 have considered a stipulated protective order. The Parties are currently meeting and conferring  
4 regarding Defendant's production in response to Plaintiff's initial round of written discovery  
5 requests.

6 **IX. CLASS ACTIONS**

7 Not applicable.

8 **X. RELATED CASES**

9 None.

10 **XI. RELIEF**

11 **Plaintiff's Position**

12 Plaintiff seeks all relief as allowed by law including unpaid wages, liquidated damages,  
13 interest, waiting time penalties, attorney's fees and costs, restitution and such other relief as the  
14 court deems just and proper. As of the filing of the Complaint, the failures to pay Plaintiff his  
15 agreed upon salary, along with waiting time penalties and interest exceeded \$300,000, even after  
16 accounting for the minimal installment payments Defendant provided sporadically. Factoring in  
17 liquidated damages, overtime premiums and attorney's fees, the monetary damages were  
18 approximately \$400,000 at the time of filing the Complaint. The damages have continued to  
19 accrue since the filing of the Complaint in the forms of prejudgment interest and the expenditure  
20 of attorneys' fees and costs.

21 **Defendants' Position**

22 Defendant denies that Plaintiff has sustained any injury, damage, or loss, if any, by reason  
23 of any act or omission of Defendant or its agents or employees. To the extent that attorney's fees  
24 and costs are available, Defendant will seek that relief.

25 **XII. SETTLEMENT AND ADR**

26 The Parties have complied with ADR L.R. 3-5 and participated in two Settlement  
27 Conferences with Magistrate Judge Susan van Keulen.

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1 **XIII. CONSENT TO MAGISTRATE JUDGE**

2 Not all Parties agreed to proceed before a magistrate judge.

3 **XIV. OTHER REFERENCES**

4 None.

5 **XV. NARROWING OF ISSUES**

6 After completion of further discovery, the Parties will be in a position to discuss possible  
7 narrowing of the issues.

8 **XVI. EXPEDITED TRIAL PROCEDURE**

9 Not applicable.

10 **XVII. SCHEDULING**

11 The Parties propose the following revised schedule:

12 <b>EVENT</b>	13 <b>DEADLINE</b>
14 Joint Trial Setting Conference Statement	15 November 18, 2022
16 Trial Setting Conference	17 11:00 am on December 9, 2022
17 Fact Discovery Cutoff	18 December 14, 2022
18 Designation of Opening Experts with Reports	19 December 22, 2022
19 Designation of Rebuttal Experts with Reports	20 January 20, 2023
20 Expert Discovery Cutoff	21 February 7, 2023
21 Deadlines for Filing Discovery Motions	22 Per Local Rule 37-3
22 Deadline for Filing Dispositive Motions	23 February 27, 2023
23 Hearing on Anticipated Dispositive Motions	24 9am on April 13, 2023

23 **XVIII. TRIAL**

24 Plaintiff withdraws his demand for a jury trial and stipulates to a bench trial. The Parties  
25 estimate four court days for trial.

26 **XIX. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

27 The Parties have filed “Certification of Interested Entities or Persons” and do not have  
28 any persons to identify other than the Parties in this case.

1 **XX. PROFESSIONAL CONDUCT**

2 All attorneys of record for the parties have reviewed and will abide by the Guidelines for  
3 Professional Conduct for the Northern District of California.

4 **XXI. OTHER MATTERS**

5 Not presently applicable.

6 DATED: June 23, 2022

Respectfully submitted,

7 RUDY, EXELROD, ZIEFF & LOWE, LLP

8 By: /s/ Chaya M. Mandelbaum

9 CHAYA M. MANDELBAUM

10 *Attorneys for Plaintiff*

11 ANUBHAV SINGH OBEROI

12 DATED: June 23, 2022

13 LEWIS BRISBOIS BISGAARD & SMITH LLP

14 By: /s/ Robert I. Lockwood

15 JOSEPH R. LORDAN

16 ROBERT I. LOCKWOOD

17 DATED: June 23, 2022

18 THE LAW OFFICES OF CHARLES R. ZEH, ESQ.

19 By: /s/ Charles R. Zeh

20 CHARLES R. ZEH

21 *Attorneys for Defendants*

22 AIRWIRE TECHNOLOGIES,

23 JON BENGTSON, and DEBASHIS BAGCHI

24 **ECF ATTESTATION**

25 Pursuant to Civil L.R. 5-1(i)(3), the filer attests that concurrence in the filing of this  
26 document has been obtained from each of the other signatories thereto.

27 Executed this 23<sup>rd</sup> day of July 2022, at San Francisco, California.

28 By: /s/ Chaya M. Mandelbaum

CHAYA M. MANDELBAUM